

STATEMENT OF CONSIDERATION RELATING TO  
907 KAR 3:225

Department for Medicaid Services  
Amended After Comments

(1) A public hearing regarding 907 KAR 3:225 was not requested and; therefore, not held.

(2) The following individuals submitted written comments regarding 907 KAR 3:225:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Nathan Goldman, General Counsel	Kentucky Board of Nursing; Louisville, KY
Julianne Z. Ewen, DNP, APRN, President	Kentucky Coalition of Nurse Practitioners & Nurse Midwives; Louisville, KY
Leila Faucette, Executive Director	Kentucky Coalition of Nurse Practitioners & Nurse Midwives; Louisville, KY

(3) The following individual from the promulgating agency responded to comments received regarding 907 KAR 3:225:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Stuart Owen, Regulation Coordinator	Department for Medicaid Services

(1) Subject: Primary Care Provider Definition

(a) Comment: Nathan Goldman, General Counsel for the Kentucky Board of Nursing, stated the following:

“Section 1(30) defines “primary care provider” to include an APRN. However, APRN is not defined by reference to the statute (KRS 314.011(7)). Also, I cannot find where the term “primary care provider” is used in the body of the regulation.”

Julianne Z. Ewen, President of the Kentucky Coalition of Nurse Practitioners & Nurse Midwives and Leila Faucette, Executive Director of the Kentucky Coalition of Nurse Practitioners & Nurse Midwives, echoed the comments from the Kentucky Board of Nursing.

(b) Response: DMS is deleting the definition of “primary care provider” from the administrative regulation via an “amended after comments” regulation.

(c) Comment: Nathan Goldman, General Counsel for the Kentucky Board of Nursing, stated the following:

“Section 1(30)(b)1 uses the term “Collaborative Practice Agreement for Prescriptive Authority” in accordance with KRS 314.042. This term is incorrect. The correct term, pursuant to KRS 314.042, is “Collaborative Agreement for the APRN’s Prescriptive Authority” (CAPA). Also, the provision does not state whether it is referring to the CAPA for non-controlled substances (CAPA-NS) or for controlled substances (CAPA-CS).”

Julianne Z. Ewen, President of the Kentucky Coalition of Nurse Practitioners & Nurse Midwives and Leila Faucette, Executive Director of the Kentucky Coalition of Nurse Practitioners & Nurse Midwives, expressed nearly identical comments to those of Nathan Goldman.

(d) Response: DMS is deleting the definition of “primary care provider” from the administrative regulation via an “amended after comments” regulation.

(e) Comment: Julianne Z. Ewen, President of the Kentucky Coalition of Nurse Practitioners & Nurse Midwives and Leila Faucette, Executive Director of the Kentucky Coalition of Nurse Practitioners & Nurse Midwives stated the following:

“Section 1(30)(b)(2) imposes on the APRN a requirement for physician backup which is unnecessary and is not required in any existing Kentucky statute or regulation. This requirement would create a very difficult – if not impossible – situation for any APRN who wishes to participate as a service provider in the Medicaid home and community based services waiver program.”

Nathan Goldman, General Counsel for the Kentucky Board of Nursing, stated the following:

“Section 1(30)(b)2 adds an unnecessary requirement of physician backup.”

(f) Response: DMS is deleting the definition of “primary care provider” from the administrative regulation via an “amended after comments” regulation.

(2) Subject: Advanced Practice Registered Nurse Requirements

(a) Comment: Nathan Goldman, General Counsel for the Kentucky Board of Nursing, stated the following:

“Section 6(4)(c)1.c. states that the APRN ‘meets the requirements of 201 KAR 20:057’. Which requirements is it referring to? Why is the reference necessary?”

(b) Response: The requirement exists when behavioral health services are provided pursuant to the community mental health center services requirements as established in 907 KAR 1:044. The Community Mental Health Center Services Manual, which is

incorporated by reference into 907 KAR 1:044, only authorizes an advanced practice registered nurse (APRN) to provide services if the APRN meets the requirements established in 201 KAR 20:057.

DMS will delineate the specific subsections of 201 KAR 20:057 which contain the specific requirements per service in an “amended after comments” administrative regulation.

The respective requirements are as follows:

An APRN who provides chemotherapy services must meet the requirements established in Section 2(1) and Section 6(1) – (3) of 201 KAR 20:057. Those requirements are:

201 KAR 20:057, Section 2(1):

“Section 2. The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in the following scope and standards of practice statements for each specialty area:

(1) Scope and Standards of Psychiatric-Mental Health Nursing Practice.”

201 KAR 20:057, Section 6(1) – (3):

“Section 6. (1) A CAPA-NS shall include the name, address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced practice registered nurse. An advanced practice registered nurse shall, upon request, furnish to the board or its staff, a copy of the CAPA-NS.

(2) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(9)(a), the APRN shall file with the board the "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)".

(3) For purposes of the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.”

An APRN who performs psychiatric evaluations and testing must meet the requirements established in Section 2(1) of 201 KAR 20:057 which are:

“Section 2. The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in the following scope and standards of practice statements for each specialty area:

(1) Scope and Standards of Psychiatric-Mental Health Nursing Practice.”

(3) Subject: Psychiatric Services

(a) Comment: Julianne Z. Ewen, President of the Kentucky Coalition of Nurse Practitioners & Nurse Midwives and Leila Faucette, Executive Director of the Kentucky

Coalition of Nurse Practitioners & Nurse Midwives stated the following:

“Section 5(2)(b)(2)(a) [page 8-9] states that psychiatric services may be provided by a psychiatrist or by a physician, but fails to list an Advanced Practice Registered Nurse (APRN.) This category of provider needs to be added to this section. This is inconsistent with the inclusion of the APRN with the psychiatrist or physician to provide psychotropic medication management in 5(2)(b)(4).”

(b) Response: DMS is adding the following language (underlined) in an “amended after comments” administrative regulation to authorize psychiatric services provided by an advanced practice registered nurse:

“(2) Psychiatric services provided:

(a) By a:

1. Psychiatrist or physician in accordance with the psychiatric service limit established in 907 KAR 3:005; or

2. Advanced practice registered nurse in accordance with the psychiatric service limit established in 907 KAR 1:104[Physician; and

~~(b) In accordance with the psychiatric service limit established in 907 KAR 3:005;].”~~

(4) Subject: Physicians Services

(a) Comment: Julianne Z. Ewen, President of the Kentucky Coalition of Nurse Practitioners & Nurse Midwives and Leila Faucette, Executive Director of the Kentucky Coalition of Nurse Practitioners & Nurse Midwives stated the following:

“Section 6(2) [pages 12-13] refers to ‘Physician services’ and we recommend that they be renamed “Medical services’ since they can be provided by either a physician or an APRN.”

(b) Response: The “state plan amendment” approved by the Centers for Medicare and Medicaid Services (CMS) and which serves as the basis for the Department for Medicaid Services’ receipt of federal funding for the services uses the term “physician services”; therefore, DMS prefers to use the same term in the administrative regulation.

#### SUMMARY OF STATEMENT OF CONSIDERATION AND ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 3:225 and is amending the administrative regulation as follows:

Page 4  
Section 1(30)

Line 4 through

Page 5

Line 20

After “(30)”, delete the following:

“Primary care provider” means:

(a) A licensed primary care physician who is a:

1. Doctor of medicine or osteopathy; and
2. General practitioner, family practitioner, pediatrician, internist, obstetrician, or gynecologist;

(b) A licensed, certified advanced practice registered nurse who:

1. Has a "Collaborative Practice Agreement for Prescriptive Authority" in accordance with KRS 314.042; and
2. Has a signed written agreement with a primary care physician for backup twenty-four (24) hours per day seven (7) days a week for needed prescriptions and other primary care services outside the scope of practice of the advanced practice registered nurse;

(c) A physician group practice which bills the department using a group practice Medicaid provider number;

(d) A licensed primary care center operating under physician supervision which has at least one (1) full-time equivalent primary care physician who is a general practitioner, family practitioner, doctor of osteopathy, pediatrician, internist, obstetrician, or gynecologist;

(e) A licensed rural health clinic operating under physician supervision by a primary care physician who is a general practitioner, family practitioner, doctor of osteopathy, pediatrician, internist, obstetrician, or gynecologist; or

(f) A licensed physician specialist who is a doctor of medicine or osteopathy if the specialist agrees to serve as a primary care provider.

(31)

Page 5

Sections 1(32) and (33)

Lines 22 and 23

Renumber these two (2) subsections by inserting “(31)” and “(32)”, respectively, and by deleting “(32)” and “(33)”, respectively.

Page 6

Sections 1(34), (35), (36), and (37)

Lines 3, 4, 5, and 7

Renumber these four (4) subsections by inserting “(33)”, “(34)”, “(35)”, and “(36)”, respectively, and by deleting “(34)”, “(35)”, “(36)”, and “(37)”, respectively.

Page 9

Section 5(2)(a)1.

Line 1

After “Psychiatrist”, insert the following:

or physician in accordance with the psychiatric service limit established in 907

KAR 3:005

Page 9

Section 5(2)(a)2. and (b)

Lines 2 - 3

After "2.", insert the following:

Advanced practice registered nurse in accordance with the psychiatric service limit established in 907 KAR 1:104

Delete the following:

Physician; and

(b) In accordance with the psychiatric service limit established in 907 KAR 3:005

Page 14

Section 6(4)(c)1.c.

Line 7

After "nursing", insert the following:

and who is employed by or under contract with a specialty IC clinic shall be authorized to provide:

(i) Chemotherapy services if the APRN meets the requirements of 201 KAR 20:057, Section 2(1) and Sections 6(1) – (3); or

(ii) Psychiatric evaluations and testing if the APRN meets the requirements of 201 KAR 20:057, Section 2(1)

Delete the following:

meets the requirements of 201 KAR 20:057, and who is employed by or under contract with a specialty IC clinic shall be authorized to provide the services